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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

MAR 31 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
800 Data Base Access Tariffs and the ) CC Docket No. 93-129  
 )  
800 Service Management System Tariff )

REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW

Undersigned Petitioners hereby file their Reply to various Oppositions<sup>1</sup> to the Petitioners' March 2, 1994, Application for Review ("Application") in the above-captioned docket.

In their Application, Petitioners pointed out that the Common Carrier Bureau's ("Bureau") Order<sup>2</sup> was irrational and contrary to Federal Communications Commission ("Commission") precedent. The Order required that Petitioners make available (pursuant to a protective order) to intervenors the extremely sensitive vendor information Petitioners utilized to calculate the forward-looking costs upon which the vertical 800 data base features prices were based. Petitioners agreed to make their confidential switching cost models available pursuant to a protective order<sup>3</sup> and did not challenge the Order's directive that an alternative cost methodology be used for calculation of

<sup>1</sup>Oppositions were filed herein Mar. 17, 1994, by Ad Hoc Telecommunications Users Committee ("Ad Hoc"), Allnet Communication Services, Inc. ("Allnet"), MCI Telecommunications Corporation ("MCI"), National Data Corporation ("National Data") and Sprint Communications Company, L.P. ("Sprint").

<sup>2</sup>In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order, DA 94-99, rel. Jan. 31, 1994 ("Order").

<sup>3</sup>Application at 6 & n.20.

exogenous costs for basic 800 query services.<sup>4</sup> At issue in the Application is solely the proprietary information of equipment vendors -- information without which forward-looking costs cannot be derived.

For the most part, parties opposing the Application do not seem to comprehend its contents. Allnet, for example, seems to think that this proceeding is conducted under the Freedom of Information Act.<sup>5</sup> Allnet, relying on this error, has filed a pleading which has nothing to do with any issue in this proceeding. Ad Hoc finds the Application's focus on vertical features (and not exogenous cost calculation) "curious,"<sup>6</sup> while National Data proclaims that "the most telling aspect of the LECs' [local exchange carriers] application is that it 'deals only with 800 data base vertical features.'"<sup>7</sup> Of course, such focus was neither "curious" (at least to Petitioners) nor "telling" -- instead reflecting only that the exogenous cost calculations did not need to be forward looking in nature. MCI finds its own supposed right to review equipment vendor data relied on in support of a tariff not filed by MCI as rising to the level of one demanding constitutional protection.<sup>8</sup> All this controversy arises in a situation where Petitioners are simply

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<sup>4</sup>Id. at 2 & n.6.

<sup>5</sup>See Allnet at 2. See also 5 USC § 552(a).

<sup>6</sup>Ad Hoc at 2 n.3.

<sup>7</sup>National Data at 3 (emphasis in original).

<sup>8</sup>MCI at 10.

trying to provide the best cost support they can without compromising the extremely confidential information provided to them by their equipment vendors under restrictive contracts.

Substantively, all opposing parties rely on language in the Commission's ONA Tariff Order<sup>9</sup> which observed that the "unusual procedures adopted for review" utilized in the Open Network Architecture ("ONA") tariff proceeding would not be used again without substantial justification.<sup>10</sup> Following on this language, opposing parties proclaim that no such showing has been made in this proceeding, utterly ignoring the fact that at issue here are simply different applications of exactly the same models reviewed in the ONA proceeding, and exactly the same types of vendor information (from exactly the same vendors). Even the Bureau in the Order from which review is sought here was unable to distinguish between the two proceedings, manufacturing differences which are meaningless.<sup>11</sup>

There are really two major points we wish to raise here.

First, if the Commission really wants LECs to rely on the best forward-looking cost support for complex interstate tariffs, it must recognize that those forward-looking costs are almost always going to be supported by and derived from some kind of confidential and competitively sensitive information. The

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<sup>9</sup>In the Matter of Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, Application for Review, Order, 9 FCC Rcd. 180 (1993) ("ONA Tariff Order").

<sup>10</sup>Id. at 181 n.17.

<sup>11</sup>Order ¶ 14. Also see Application at 7-8.

response of the Bureau to this reality -- that cost information does not need to be accurate so long as it is public -- is the stuff of which great parody is made. Just what public good is accomplished, dare we ask, by public review of inaccurate information? How will the Commission react if intervenors complain that the information is inaccurate? Can the filing carriers defend it? In today's competitive telecommunications world, it is simply unrealistic and unfair to expect carriers to release their confidential information (even under a protective order) as a prerequisite to getting a new service in place. It is even less realistic to expect unregulated equipment vendors dealing with carriers to submit to the same conditions simply in order to do business.

Second, despite the protestations of some opposing parties, carriers are entitled to a modicum of stability when dealing with the Commission. Such stability has been sorely lacking in this proceeding, and conflicting decisions such as currently exist concerning protection of vendor information will serve to even further undermine this stability by making it look like reasoned decision making has somehow become lost in the shuffle. Moreover, Petitioners have already offered to give to opposing parties practically everything they want except the vendor data. Whether this offer is good, bad or indifferent, today we have no guidance at all -- other than dramatically conflicting opinions emanating from the Bureau and the Commission.

If for no other reason, the Commission should grant the instant Application for Review and take the opportunity to issue

a definitive and binding order which deals with the issues raised  
by forward-looking cost development in today's market.

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**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 31st day of March, 1994, I have caused a copy of the foregoing **REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW**, to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
Kelseau Powe, Jr.

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